In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 575(M/B) of 2004

Lilanshu Arora, S/o Krishan Lal,
R/o 360-Krishna Vihar Awas Vikas,
Rudrapur, District U.S. Nagar ..... Petitioner.

Vs.

1- G.B. Pant University of Agriculture
through its Registrar, Pantnagar,
District U.S. Nagar.

2- Vice Chancellor, G.B. Pant University,
Pantnagar, District U.S. Nagar.

3- Dean, College of Technology, G.B. Pant
University, District U.S. Nagar. ..... Respondents.

Sri J.P. Joshi, Advocate for the petitioner.
Sri Rajendra Dobhal, Advocate for the respondents.

Date: 20-12-2004.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

(Per: Hon'ble Irshad Hussain, J.)

The petitioner by way of this petition, under Article 226 of the Constitution of India, prayed for issuance of a writ, order or direction in the nature of certiorari to quash the order dated 16-1-2004 (Annexure-4) and further for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to issue him degree of B. Technology, Agricultural Engineering.

2- Petitioner was student of B. Technology, Agricultural Engineering Course of four years duration in respondent no.1-university. He had cleared all the courses and failed in the course B.P.P.-195 Physics-I, but he was permitted to register himself in the Course Physics-I, vide order dated 20-8-2003 by the Registrar of the university. As per regulations if any under-graduate student fails in some course, he shall be dropped from the university on that account. However, in exceptional circumstances the Vice-chancellor of the university can permit fourth chance to clear the course. The petitioner was given the fourth chance also, but he failed in the fourth chance

also and, therefore, he was dropped from the university on account of poor academic performance. The petitioner again applied for proficiency examination in the same course and was granted permission to appear in the examination vide order dated 13.1.2004 (Annexure-1). The petitioner in pursuance thereof appeared in the proficiency examination and his performance was declared satisfactory, not only in course B.P.P. -195 Physics-I, but also in course B.P.P.-226 Physics-II(A) and in the course B.P.M.-132 (Engg. Maths-II), vide result of the proficiency examination (Annexures 2 and 3). Despite the declaration of satisfactory result of the petitioner, the respondent no.3, Dean, College of Technology of the University by order dated 16.1.2004 (Annexure-4) cancelled the earlier order dated 13.1.2004 by which the permission was granted to the petitioner to appear in the proficiency examination in course Physics-I by giving the reason that the petitioner had earlier failed to clear this course even in four attempts.

3- It is not in dispute that the petitioner had completed four years degree course. However due to the cancellation of the order dated 13.1.2004 and consequent withholding of his final result, he has not been awarded the degree/certificate.

4- In the counter affidavit Sri S.D. Bisht, Assistant Dean, Student Welfare averred that the permission to appear in the proficiency examination vide order dated 13.1.2004 had in fact been granted due to the oversight of the fact that the petitioner had even in the past failed to clear said course in four attempts. Learned counsel for the petitioner strenuously urged that the respondents do not dispute that in exceptional circumstances a student can be permitted to appear in the proficiency examination despite his having failed in the same course in earlier four attempts and, therefore, if the competent authority had, keeping in view the attending circumstances and the reasons which must have been canvassed by the petitioner, given the permission to appear in the proficiency examination on 13.1.2004, the decision to recall the said order and cancel it on the stated ground is arbitrary and not capable of being legally sustained. In support of the submission learned counsel pressed into service a decision of the Division Bench of the Allahabad High Court in the

matter of V.P.S. Negi versus Vice chancellor G.B. Pant University; [1987 UPLBEC 127]. The facts of the case before the Allahabad High Court were that the student got admission in B.Sc. Agricultural and Animal Husbandry Course. The admission was cancelled by the University for want of required merit. The student challenged the order of cancellation. Ad-interim order was passed in favour of the student and he was admitted in the course. During the pendency of the writ petition the student passed the examination and provisional certificate to this effect was produced before the Court by the University. After considering the facts of the case the Hon'ble Judges of the Court were of the view that taking a realistic view of the matter, the student shall be deemed to have been validly admitted to the course and the order of cancellation of his admission was quashed. In view of it the Registrar of the University was directed to issue the final result of the student.

5- Learned counsel for the respondents on the other hand urged that the respondent no.3, Dean, College of Technology was justified in canceling the order dated 13-1-2004 when the mistake was detected and it was found that the petitioner had, in the past, failed to clear the course Physics-I even in four attempts. He also submitted that in an endeavor to maintain high academic standards in the University regulations provide that a student shall be dropped from the university on account of poor academic performance. According to him there being no dispute that the petitioner could not clear that course even in four attempts, it is evident that it was a perfect example of poor academic performance undermining the standard fixed by the university and if the order dated 13.1.2004 was to be maintained it would have the effect of diluting the academic norms for excellences in the particular course/filed set up by the university. There can be no doubt that university authorities have a zeal to maintain the high quality of educational standard for its students but from perusal of the order dated 13-1-2004 (Annexure-1) it is also abundantly clear that the competent authority has had power to permit a particular student in exceptional circumstances to appear in proficiency examination in the required course despite his having been failed to clear the course in the earlier attempt. Respondents have not alleged that the relevant

regulation forbid the competent authority to permit appearing in the proficiency examination in such cases. It has also not been shown that the petitioner malafidely suppressed the information about his failing in earlier four attempts and thereby got the order dated 13.1.2004 issued in his favour by misleading the concerned authority, that is, Dean, College of Technology. The order canceling the said permission was passed despite the concerned Head of the Department issued the satisfactory performance report by way of result of the proficiency examination vide Annexures 2 and 3. In the face of this situation we are inclined to accept the argument that the impugned order dated 16.1.2004 was passed without considering these factors and also the important facts that the competent authority was duly authorized to permit the petitioner to appear in proficiency examination which opportunity being availed the required satisfactory result had been obtained by the petitioner.

5- In the face of the above facts, the ratio of the reported decision referred above, can not be said to be inapplicable here. The facts of the case warrant a realistic view to be taken so that a student who appear to have finally cleared the four years course need not be deprived of the degree, which is his right after a long and strenuous four years course of extended duration. It also appear advantageous to refer to a decision of the Apex Court in the matter of Rajendra Prasad Mathur versus Karnataka University; AIR 1986 Supreme Court 1448. In that case the appellants were admitted to certain private Engineering College for B.E. Degree Course, although they were not eligible for admission. In that case, the Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of the cancellation was upheld by the High Court. At the same time, the Court took the view that the fault lay with the Engineering College which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these Engineering Colleges. Accordingly, the Court allowed the appellants to continue their studies in the respective Engineering Colleges, in which they were granted permission. The appellants were not found at fault and their right to continue the course was found justified. Although these reported

matters were related to admissions of the incumbents, but in giving relief to them, the glaring factor was that they have prosecuted their studies after admission, fruit of which was not denied to them. In our view similar realistic approach need to be made in the case of the petitioner, who on being permitted to appear in the proficiency examination, has been able to secure the required standard, and particularly when no malafides can be attributed to him in seeking permission granted to him to appear in the proficiency examination. The impugned order dated 16-1-2004 of cancellation of the permission granted and already successfully availed by the petitioner can not therefore be legally sustained. Considering the special features of the case we are also of the view that our decision in the matter shall not be treated as a precedent.

6- For the reasons aforesaid, this writ petition succeed and we accordingly issue a writ in the nature of certiorari to quash the impugned order dated 16-1-2004 and further issue a writ in the nature of mandamus commanding the respondents to declare the petitioner's result of the four years B. Technology, Agricultural Engineering Course and to grant him degree/certificate, if found successful.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

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